EQUITY—SPECIFIC PERFORMANCE—CONTRACT NOT ENFORCEABLE AS A WHOLE.—Three parties held the adjoining front lots on a certain square. They entered into an agreement to create a private alley across the rear of their lots to connect with the side streets. The agreement was not recorded. Later, the owner of one of the corner lots sold to a third party, who refused to be bound by the agreement. The defendant, the owner of the other corner lot, gave notice to the other two parties to the agreement, that unless they began work on the alley within ten days he would close the right of way across his lot. No action was taken, and at the end of the ten days the defendant commenced the erection of a stable at the rear of his lot over the right of way. The owner of the middle lot filed a bill in equity to restrain the further erection of the stable, and for specific performance of the agreement. *Held,* that as the purchaser of the other corner lot had refused to be bound by the agreement there was no longer any consideration for the defendant's promise, and as the agreement could not be carried out as a whole the court would leave the parties to their remedy at law. (FELL and MESTREZAT, JJ., dissenting. *Bannerot* v. *Davidson et al.* (1910), — Pa. —, 75 Atl. 417.

It is well settled that an injunction will lie to protect the owner of an easement in its enjoyment. *Herman* v. *Roberts,* 119 N. Y. 37, 23 N. E. 442, 16 Am. St. Rep. 800; *Bailey et al.* v. *Agawam Nat. Bank,* 190 Mass. 20, 76 N. E. 449, 3 L. R. A. (N. S.) 98, 112 Am. St. Rep. 296. This statement, however, must be taken with the qualification that an injunction will not be granted as a matter of right in every case of the obstruction of a right of way or other easement but each case must be decided on its own circumstances, and it rests in the sound discretion of the court whether an injunction will issue. *Starkie* v. *Richmond,* 155 Mass. 188, 29 N. E. 770. In granting an injunction the effect of which is to compel the specific performance of a contract the court will be guided by the same principles as govern a direct decree for specific performance. *Berliner Gramaphone Co.* v. *Seaman,* 110 Fed. 30; *South Chicago City Ry. Co.* v. *Calumet Electric St. Ry.,* 171 Ill. 391. Such a decree will not be granted unless the contract can be enforced as an entirety, especially if it will be unreasonable and unjust to the defendant. *Baldwin* v. *Fletcher,* 48 Mich. 604, 12 N. W. 873; *Friend* v. *Lamb,* 152 Pa. 529. There is an exception to this rule in the case of a separable contract; *Meek* v. *Walthall,* 20 Ark. 648; but the present case does not fall under the exception, for the agreement was for a right of way over the three lots as a complete thing, and the decision in this case, though an apparent hardship upon the plaintiff, seems clearly sustained by authority.

EVIDENCE—LIMITATION OF NUMBER OF WITNESSES—WHEN REVERSIBLE ERROR.—Having no more witnesses present in court to examine, plaintiff's counsel moved to adjourn court until the following morning. The court, as a condition to adjournment, required counsel to name the witnesses he would call the succeeding day. After objecting, counsel complied, whereupon the court stated, that he would hold counsel pretty rigidly, on the following day, to the number of witnesses named. The next day the court refused to allow

plaintiff's counsel to call and examine a material witness, not named the previous evening. *Held,* that such refusal was an abuse of judicial discretion and reversible error. *Campbell* v. *Campbell et al.* (1909), — R. I. —, 73 Atl. 354.

The general rule upon the point involved in the principal case is, that the trial court may in its discretion limit the number of witnesses who will be permitted to give evidence upon any point. *Delgado* v. *Gonzales,* 28 S. W. 459; *Larson* v. *Eau Claire,* 92 Wis. 86; *Minthon* v. *Lewis,* 78 Iowa 630; *Kesee* v. *R. Co.,* 30 Iowa 78; *Everett* v. *R. Co.,* 59 Iowa 243; *Gray* v. *St. John,* 35 Ill. 222; *Cushing* v. *Billings,* 56 Mass. (2 Cush.) 158; *Detroit City R. Co.* v. *Mills,* 85 Mich. 634. 3 ENCYC. EVID. 930-934; 4 Id. 680-681 and cases there cited. The following cases hold that an abuse of judicial discretion by the trial court in limiting the number of witnesses is reversible error. *Greene* v. *Phoenix Mutual Life Ins. Co.* 134 Ill. 315; *Hubble* v. *Osborn,* 31 Ind. 249; *Kash* v. *Miller,* 2 Bush (Ky.) 568; *Ward* v. *Washington Ins. Co.,* 19 N. Y. Super Ct. 229; *Galveston H. & S. A. R. Co.* v. *Matula,* 79 Tex. 577. With these cases the principal case is in accord. Some cases, however, deny the general power of the trial court to limit the number of witnesses, except where the fact to be proved is practically uncontroverted, or the issue collateral or unimportant. *Ward* v. *Dick,* 45 Conn. 235; *Reynolds* v. *Port Jarvis B. & S. Co.,* 32 Hun 64; *Union Nat'l Bank* v. *Baldenwick,* 45 Ill. 375; *Fenwick* v. *Boling,* 50 Mo. App. 516; *Barhyte* v. *Summers,* 68 Mich. 341; *Cooke Brewing Co.* v. *Ryan,* 98 Ill. App. 414; *Village of South Daneville* v. *Jacobs,* 42 Ill. App. 533. While in principle the rule would seem to be applicable to all classes of witnesses and to evidence upon any point whatever,—and it is so stated by WIGMORE (3 WIGMORE, EVID. § 1908, 3)— courts are in considerable conflict as to its proper application to particular classes of witnesses, or to evidence of particular facts. Some cases refuse to follow the general rule, where the issue was as to the value of property, or the damage thereto. *Covington* v. *Tafee,* 24 Ky. L. Rep. 378; *Kash* v. *Miller,* 2 Bush (Ky.) 568; *Barhyte* v. *Summers,* 68 Mich. 341. In still other cases, where the character of a party was in issue, courts have denied the power of the trial court to limit the number of witnesses as to that issue. *Ward* v. *Dick,* 45 Conn. 235; *Nelson* v. *Wallace,* 57 Mo. App. 397.

EXECUTORS AND ADMINISTRATORS—LIABILITY FOR FUNERAL EXPENSES.—Emma Skillman died, leaving considerable property. Her husband having been confined in an insane asylum for many years, his guardian paid the expenses of his wife's last sickness and funeral. Her husband having died since, his administrator now seeks to recover from her executor the amounts so paid. § 3165 of the Iowa Code makes family expenses chargeable upon the property of both husband and wife. § 3347 provides that "as soon as the executor or administrator is possessed of sufficient means over and above the expenses of administration, he shall pay off the charges of the last sickness and funeral of deceased * * * *." *Held,* § 3347 makes the estate of the wife primarily liable for the expenses of her last sickness and funeral and, therefore, the husband's guardian having paid them, and being only